U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: OCT 0 3 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a physician specializing in critical care medicine. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On the Form I-290B Notice of Appeal, counsel checked a box reading "My brief and/or additional evidence is attached." Counsel did not indicate that any future supplement would follow. Therefore, the initial appellate submission constitutes the entire appeal. The petitioner submitted no exhibits on appeal except for a copy of the denial notice.

The Form I-290B includes a space for the petitioner to "[p]rovide a statement explaining any erroneous conclusion of law or fact in the decision being appealed." Counsel states:

> The record reflects through [the petitioner's] leading roles at prominent medical institutions along with his history of outstanding clinical success in addition to his research contributions to the field of critical care medicine [that the petitioner] has demonstrated that (1) his work has had substantial intrinsic merit; (2) the impact of his work has spread beyond his hospital community and had a significant national influence in improving healthcare (numerous physicians have utilized [the petitioner's] research in the clinical setting, and his expertise as a clinician has reduced complication rates for his patients, many [of] whom are out of state); and (3) [the petitioner's] abilities are exceptional and stand above his peers, such that a waiver of the labor certification process would be in the national interest.

Counsel does not elaborate as to the nature of the claimed "leading roles" and "research contributions." The director, in the denial notice, had questioned earlier, similar claims by counsel, and had found that "the petitioner has provided no evidence demonstrating that he developed a new procedure, technique or treatment," much less one that "had been significantly utilized by others in the field." Counsel cannot rebut the director's findings simply by repeating the vague assertion that the petitioner's work has been important and influential.

In a separate statement accompanying the appeal form, counsel maintains that the petitioner "has judged the work of even senior peers" and that "there are testimonials submitted showing that he has been indispensable" to the university department where he worked. Counsel does not, however, allege any specific factual or legal errors or other deficiencies in the director's decision. Counsel merely asserts that, given (unidentified) "substantial evidence" of the petitioner's (unspecified) achievements, the director should have approved the petition.

Counsel asserts "clear evidence was submitted showing that in particular [the petitioner] has made great contributions to the field through both his research work as well as clinical abilities, both well attested to by both his peers with whom he has worked as well as independent testimonials." The director, in the denial notice, acknowledged the witnesses' letters and quoted from several of them, but found that the letters failed to distinguish the petitioner from other qualified professionals in his specialty. Counsel does not address the director's concerns, instead simply repeating that the letters are in the record.

Counsel asserts that the petitioner "is a member of the most prominent medical societies in the country." Counsel acknowledges that these medical societies do not require outstanding achievements as a condition of membership, but states that "this is the norm." The director, however, did not raise the issue of the petitioner's memberships as a basis for denial. Counsel does not explain how these memberships establish eligibility for the national interest waiver; the prestige of a society does not necessarily reflect on each individual member thereof.

In sum, counsel does not explain how the director failed to take the petitioner's previous evidence into consideration. Counsel does not allege any specific factual or legal errors or other deficiencies in the director's decision. Counsel essentially asserts that the director should have approved the petition, which is not a sufficient basis for a substantive appeal.

The AAO notes that, on September 8, 2011 (five months before the filing of the appeal), an employer applied for a labor certification on the petitioner's behalf. The Department of Labor approved the labor certification, and USCIS approved a subsequent immigrant petition based on that labor certification. Thus, the petitioner has obtained the very labor certification that he sought to waive in the present proceeding. The same employer also filed a nonimmigrant petition on the alien's behalf, and USCIS approved that petition. Therefore, the petitioner is authorized to work until July 23, 2015 for the employer that obtained the labor certification. By the time the petitioner filed the appeal in February 2012, he had already moved from Louisiana to Arizona to work for this new employer. Nevertheless, counsel repeatedly contended that it is in the national interest to waive a requirement that the petitioner has already met.

Because counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the AAO must summarily dismiss the appeal.

ORDER: The appeal is dismissed.